In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Revision No.1223 of 2007

.....

Date of decision:13.8.2007

Anil Kumar and others

.....Petitioners

v.

State of Haryana

.....Respondent

....

Present: Mr. A.D.S. Jattana, Advocate for the petitioners.

Mr. Narender Sura, Assistant Advocate General, Haryana for the respondent-State.

.....

S.S. Saron, J.

This revision petition has been filed against the judgment and order dated 23.7.2007 passed by the learned Additional Sessions Judge, Rewari whereby the appeal filed by the petitioners against the judgment of conviction and order of sentence dated 3.10.2000 passed by the learned Judicial Magistrate Ist Class, Rewari whereby the petitioners were held guilty for the offences punishable under Sections 323, 324 and 34 IPC has been dismissed.

The petitioners were sent to face trial for the commission of offences punishable under Sections 323, 324, 325 and 34 IPC. The FIR in the case was registered on the complaint of one Ram Avtar son of Makhan Lal. He was admitted in Civil Hospital, Rewari on account of having received injuries in an assault. He got his statement recorded to HC Prithvi Singh which is to the effect that at 4.00 p.m. on 8.11.1994 he was going

towards his fields to irrigate them. When he reached the boundary of his fields accused Ratibhan (petitioner No.5) whose field adjoins the fields of the complainant stopped him and threatened to teach him a lesson for obtaining an injunction order against him. Ratibhan, who had `Jelly' gave two blows on the head of the complainant. Thereafter, Mahavir (petitioner No.3) who had `Fawra', Suresh (petitioner No.4) who had `Lathi', Satyavir (petitioner No.2) who was carrying `Kulhari' and Anil Kumar (petitioner No.1) who had a `Lathi' came one by one and caused injuries with their respective weapons. The complainant, therefore, received injuries all over his body. Suresh son of Dalip Singh came at the spot and rescued Ram Avtar injured. Suresh was also given a beating by the aforementioned accused. Thereafter, Laxman son of Bhola Ram and Gaj Raj Singh son of Mangtu Ram, who were going on their tractor, came at the spot and rescued Ram Avtar and Suresh from the accused persons and took them on their tractor to Civil Hospital, Rewari. The accused persons had caused injuries on account of Ram Avtar having obtained an order of injunction from the Civil Court with regard to the Well. The Police investigated the case and filed challan. The prosecution in order to establish its case examined five witnesses, besides, tendering documentary evidence. Since the prosecution had failed to conclude its evidence despite availing various opportunities, its evidence was closed by order of the learned trial Court. The statements of the petitioners in terms of Section 313 Cr.P.C. were recorded. They took the stand that they were innocent and denied having caused any injuries to the complainant party. It was stated that the complainant party entertained grudge on account of dismissal of the civil suit regarding their property.

Therefore, a false case was foisted upon them. No evidence was led in the defence. The learned trial Court vide its judgment and order dated 3.10.2000 acquitted the petitioners for the offence under Section 325 IPC. However, they were convicted and sentenced to undergo six months rigorous imprisonment and a fine of Rs.2,000/- each for the offence under Section 324 IPC. In case of default of payment of fine each of the petitioners was to undergo one month rigorous imprisonment. The petitioners were also convicted to three months rigorous imprisonment and fine of Rs.500/- each for the offence under Section 323 IPC. In default of payment of fine they were to undergo rigorous imprisonment for 15 days. The fine was paid in the trial Court, out of which 2/3rd of the fine was ordered to be paid to the injured Ram Avtar and Suresh equally after the expiry of the period of appeal. The learned Additional Sessions Judge, Rewari vide her order dismissed the appeal. The appellants were ordered to be taken into custody. The period of custody as already undergone by the petitioners during the course of inquiry and trial, it was ordered, shall be set off against the period of substantive sentence awarded to them. In this manner the judgment and order of the learned trial Court has been upheld.

When the matter came up for motion hearing before this Court on 26.7.2007 it was submitted by learned counsel for the petitioners that the matter may be considered for the grant of probation. Accordingly, notice of motion was issued to Advocate General, Haryana. The case has been taken up today after notice.

Learned counsel for the petitioners has submitted that though there are several infirmities in the prosecution case, inasmuch as, the Investigating Officer in the case has not been examined which materially

affects the case of the prosecution. Besides, documentary evidence is also lacking. However, it is submitted that the petitioners have faced protracted trial for a number of years. They are young in age and are not previous convicts and are the only bread earners. Therefore, their case may be considered for probation.

Learned counsel for the State submits that the case against the petitioners stands proved in all respects as they caused serious injuries, therefore, they are not entitled for the grant of probation.

I have given my thoughtful consideration to the matter. The occurrence in this case took place on 8.11.1994. The petitioners have thereafter faced trial for more 13 years. They have been acquitted for the offence under Section 325 IPC. They stand convicted for the offence under Sections 324 and 323 IPC. It has not been shown by the prosecution that they have been involved in any other case. Anil Kumar on the date of occurrence was 15 years, 6 months and was stated to be less than 18 years. However, the learned lower appellate Court found that in the charge-sheet the age of Anil Kumar was recorded as 17 years which shows that he was less than 19 years on the date of occurrence. It was held that Anil Kumar has failed to establish that his date of birth was 5.5.1979. The other petitioners, namely, Mahavir (petitioner No.3) is stated to be 25 years. They are all of young age. It is also stated that they are the only bread earners in the family. The petitioners have also deposited the fine of Rs.2,500/- each before the learned trial Court. Therefore, in the facts and circumstances and keeping in view the long protracted trial undergone and also to induce maintenance of amity in the village it would be just and

expedient to extend the benefit of probation to the petitioners.

Consequently, the revision petition is partly accepted and the orders imposing the sentences of imprisonment are set aside. Having regard to the circumstances of the case including the nature of the offence, the young age of the offenders, the protracted trial undergone by them and also the fact that the petitioners are not previous convicts, it is considered just and expedient to release them on probation subject to each of the petitioners furnishing personal bond in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of the learned trial Court with an undertaking to maintain peace and be of good behaviour for a period of two years and to receive sentence during the said period as and when called upon to do so. The requisite bail bonds and sureties shall be furnished within one month from receiving the copy of the order failing which the sentence awarded by the learned Courts below shall be operative and the petitioners shall be liable to be surrender and undergo the sentence.

With the modification in the sentences in the aforesaid terms, the revision petition stands disposed of.

August 13, 2007. **(S.S. Saron)**
Judge

hsp